U.S. Department of Justice

Immigration and Naturalization Service

DD

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Philadelphia Date: MAR 10 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, who affirmed that decision on a motion to reopen. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 20, 1968 in [redacted] The applicant's father, [redacted] was born in [redacted] in July 1937 and never became a U.S. citizen. The applicant's mother, [redacted] was born in [redacted] in August 1943 and became a naturalized United States citizen in November 1974. The applicant's parents married each other on July 12, 1969 in [redacted] The applicant was lawfully admitted for permanent residence on February 2, 1975. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director noted that the applicant's birth certificate failed to indicate the name of his father and the initial application failed to indicate that the applicant's parents ever married each other. However, the district director stated that a marriage had occurred between the person that the applicant named as his father, [redacted] and the applicant's mother.

The district director had the divorce decree submitted on motion, which reflects that the applicant's parents were divorced on November 26, 1982, forwarded to the Forensic Document Laboratory for a scientific examination. The laboratory was unable to authenticate the document which has subsequently been forwarded to the U.S. Embassy in [redacted] for further investigation.

The record now contains evidence that on February 11, 2000 the applicant's counsel stated in court and on the record before Judge [redacted] that the divorce decree submitted by the applicant's mother is a fake document.

The district director determined the applicant failed to establish that there had been a legal separation of his parents as held in Matter of H--, 3 I&N Dec. 742 (BIA 1949) and denied the application accordingly.

Section 321(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the

[redacted]

mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant's parents married each other in July 1969, (3) the applicant became the beneficiary of an approved visa petition filed by his mother, and (4) he was residing in the United States in his mother's legal custody as a lawful permanent resident after his mother naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, both parents must have naturalized or there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. The applicant's mother was not legally separated from the applicant's father when his mother naturalized. If there was no legal separation, as such, an award of custody to a naturalized parent under such circumstances does not result in derivation even though other requisite conditions are satisfied. See INTERP 320.1(a)(6).

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his mother's naturalization. Therefore, the acting district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The acting district director's decision is affirmed.